IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 213 of 1984

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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THE NEW INDIA ASSURANCE CO.LTD

Versus

MINOR HITENDRASINH DHIRANGSINHTHR'GH HIS GUARDIAN

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Appearance:

1. First Appeal No. 213 of 1984

MR SB VAKIL with Mr. Aspi Kapadia for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR SN SOPARKAR for Respondent No. 2

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CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 19/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

The only question which has been advanced and raised in this appeal before us is as to whether the amount of compensation awarded by the Tribunal in a case of a minor child, a living victim of a violent road accident and who has lost left leg below knee, who is awarded Rs. 1,22,200/- against the claim of Rs. 1,60,000/- is in excess or not, by way of challenge against the judgement and award of the Motor Accident Claims Tribunal (Main), Panchmahal at Godhra, to which our answer is positively in the negative.

2. The repeated contention that there was no negligence on the part of the driver of the Motor truck No. MP-1 3891 raised by the original opponent No.1 N.A.Mansuri is running counter to the weight of the evidence on record and contrary to the doctrine of res-ipso loquitor. The victim of the violent road accident was a minor who was knocked down by the truck running into excessive speed and causing serious injury and finally culminating into amputation of left leg below the knee.

3. Minor Hiten was hardly 12 years old at the relevant time. He had sustained serious and severe injury on account of truck accident. The facts and circumstances clearly go to show that the accident was the outcome of the rashness and negligence on the part of the driver of the truck. It is a settled proposition of law that no contributory negligence can be attributed to the minor when the life of the minor is at stake. The driver of the vehicle, more so in case of six wheelers or eight wheelers, is obliged to show higher degree of caution and care and judgement as the minors are unmindful of the traffic hazards and lacking traffic discipline.

On account of serious injuries the victim Hiten was treated in SSG Hospital in Baroda for 23 days as an indoor patient. Thereafter operation was carried out and under the medical advice, there was an amputation of the portion below knee. He remained in the hospital for a long time. For follow-up treatment, he was also attending OPD. He was required to be accompanied by elderly member of the family. The Medical officer concerned has also clearly stated that the bodily frame and integrity of the anatomy of Hitesh has been substantially suffered. Obviously, socially, morally, economically and in every respect the physical handicapism caused on account of the violent truck

accident will operate as a negative factor for the rest of his life and he will have to move in the society with saddled bodily integrity and it will definitely cause significant prospects in the matrimony. In our opinion, therefore the amount of compensation to the extent of Rs. 1,22,200/- awarded by the Tribunal is not on higher side as contended repeatedly on behalf of the appellant, but is in our opinion, a very conservative and miserly assessment of the loss and damages sustained by the minor on account of violent road accident. We therefore find no merit in the appeal, which deserves to be thrown over board with costs. Appeal therefore stands dismissed with costs.

(J.N.Bhatt, Acting C.J.) (A.L.Dave, J.)

*/Mohandas